



STATE OF TENNESSEE
DEPARTMENT OF FINANCE AND ADMINISTRATION

**REQUEST FOR PROPOSALS # 31701-03057
FOR TELEPHONE CALLING CARDS AND SERVICES**

1. INTRODUCTION

The State of Tennessee, Department of Finance and Administration, hereinafter referred to as “the State,” has issued this Request for Proposals (RFP) with the intent to award a contract for the provision of telephone calling cards and services for State employees who travel or make State business calls.

This RFP defines minimum service requirements; solicits proposals; details proposal requirements; and, outlines the State’s process for evaluating proposals and selecting a contractor to provide the required service. Through this RFP, the State seeks to buy the best services at the most favorable, competitive prices and to give ALL qualified businesses, including those owned by minorities, women, and persons with a handicap or disability as well as small business enterprises, opportunity to do business with the state as contractors and sub-contractors.

- 1.1. Scope of Service, Contract Period, & Required Terms and Conditions.** The contract awarded pursuant to this RFP will be drafted in accordance with the attached *Pro Forma Contract* (Attachment 6.4.), which details the State’s required:

- Scope of Services and Deliverables (section A);
- Contract Period (section B);
- Payment Terms (section C);
- Standard Terms and Conditions (section D); and,
- Special Terms and Conditions (section E).

- 1.2. Nondiscrimination.** No person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of a Contract pursuant to this RFP or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, color, religion (subject to *Tennessee Code Annotated*, Section 4–21–405), sex, national origin, or any other classification protected by federal, Tennessee state constitutional, or statutory law. The Contractor pursuant to this RFP shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

- 1.3. RFP Communications.** Reference **RFP # 31701-03057**, in all communications relating to this RFP, and direct any such communications to the following person designated as the RFP Coordinator.

Mitzi R. Hale
Department of Finance and Administration
Wm Snodgrass Tennessee Tower, 17th Floor
312 Rosa L. Parks Avenue
Nashville, TN 37243-1102
Telephone: 615-741-3735
Email: Mitzi.Hale@tn.gov

Unauthorized contact about this RFP with other employees or officials of the State of Tennessee may result in disqualification from consideration under this procurement process.

Notwithstanding the foregoing, potential proposers may also contact the following as appropriate:

- staff of the Governor's Office of Diversity Business Enterprise for assistance available to minority-owned, women-owned, and small businesses as well as general, public information relating to this RFP; and
- the following individual designated by the State to coordinate compliance with the nondiscrimination requirements of the State of Tennessee, Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, and associated federal regulations:

Greg Spradley
Senior Management Consultant
Tennessee Department of Finance & Administration
Office of Consulting Services
312 Rosa L. Parks Avenue, Suite 1200
Nashville, Tennessee 37243
Phone: 615.253.8703
Fax: 615.532.1892
Greg.Spradley@tn.gov
http://www.state.tn.us/finance/rds/consulting_services_home.html

- 1.4. **Proposer Required Review & Waiver of Objections.** Each potential proposer must carefully review this RFP, including but not limited to, all attachments (including the *Pro Forma* Contract) and any amendments, to identify any issues, questions, comments, defects, objections, or other matter requiring clarification or correction (collectively called "issues"). A potential proposer with issues concerning this RFP must provide such in writing to the State no later than the Written "Questions & Comments" Deadline detailed in the RFP Section 2, Schedule of Events. Protests based on any issues shall be considered waived and invalid if the issues have not been brought to the attention of the State, in writing, by the Written "Questions & Comments" Deadline.

2. SCHEDULE OF EVENTS

The following RFP Schedule of Events represents the State's best estimate for this RFP. The state reserves the right, at its sole discretion, to adjust the Schedule of Events or to otherwise amend this RFP at any time. The State reserves the right, at its sole discretion, to cancel or to cancel and reissue this RFP in accordance with applicable laws and regulations.

EVENT	TIME (central time zone)	DATE (all dates are state business days)
1. RFP Issued		September 2, 2011
2. Written "Questions & Comments" Deadline	2:00 p.m.	September 12, 2011
3. State Response to Written "Questions & Comments"		September 21, 2011
4. Proposal Deadline	2:00 p.m.	October 3, 2011
5. Qualifications Evidence Evaluations Completed		October 10, 2011

6. Cost Proposals Opened and Lowest Cost Identified	2:00 p.m.	October 11, 2011
7. Award Notice and RFP Files Opened for Public Inspection	2:00 p.m.	October 12, 2011
8. Contract Signing		October 24, 2011
9. Contract Signature Deadline	2:00 p.m.	October 31, 2011

3. PROPOSAL REQUIREMENTS

- 3.1. **Two Part Proposal.** A proposal in response to this RFP must respond only as required by this RFP document (including all attachments) as may be amended. It must consist of two parts: Qualifications Evidence (including any supporting documentation) and a Cost Proposal.

The State may determine a proposal to be non-responsive and ineligible for contract award if the Proposer fails to address all proposal items, organize and properly reference the Qualifications Evidence, or complete the Cost Proposal exactly as provided and required below. A Proposer is liable for any and all proposal errors or omissions.

- 3.1.1. Qualifications Evidence - The *Qualifications Evidence Guide* (Attachment 6.2. of this RFP) details specific mandatory requirements for making a proposal in response to this RFP. A Proposer must duplicate and use RFP Attachment 6.2., completed with proposal page numbers, to cover (as a table of contents), organize, reference, and complete the Qualifications Evidence portion of the proposal. All information and documentation included within a proposal must address a specific requirement of RFP Attachment 6.2. and must be clearly referenced. The State will deem any information not meeting these criteria to be extraneous and will not review it.

NOTICE: DO NOT include any pricing or cost information in any part of the Qualifications Evidence. If a Proposer includes any pricing or cost information amount of any type (even pricing relating to other projects) within the Qualifications Evidence, the state will deem the proposal non-responsive and reject it.

- 3.1.2. Cost Proposal - A Proposer must use an exact duplicate of RFP Attachment 6.3., the *Cost Proposal Guide*, to record ONLY the proposed cost EXACTLY as indicated. The Cost Proposal must incorporate ALL costs for ALL services under the contract for the total contract period. A Proposer must NOT record any other rates, amounts, or information except that which is specifically required.

A Proposer must sign and date the completed Cost Proposal.

NOTICE: The state will deem the proposal non-responsive and reject it if a Proposer fails to submit a Cost Proposal exactly as required.

- 3.2. **Proposal Delivery.** A Proposer must ensure that both proposal components offered in response to this RFP, the Qualifications Evidence and the Cost Proposal, meet all form and content requirements detailed within this RFP, including but not limited to, required signatures. Further, the Proposer must submit the two proposal components as specified below. A proposal failing to meet delivery requirements may be deemed non-responsive and ineligible for contract award.

3.2.1. Packaging

- 3.2.1.1. The Proposer must present one (1) original Qualifications Evidence document (covered by and addressing RFP Attachment 6.2.) labeled:

QUALIFICATIONS EVIDENCE – RFP # 31701-03057

and placed in a sealed package that is labeled:

DO NOT OPEN – QUALIFICATIONS EVIDENCE – RFP # 31701-03057

PROPOSER: [PROPOSER LEGAL ENTITY NAME]

- 3.2.1.2. The Proposer must present one (1) Cost Proposal document (using an exact duplicate of RFP Attachment 6.3.) labeled:

COST PROPOSAL – RFP # 31701-03057

and placed in a separate, sealed package that is labeled:

DO NOT OPEN – COST PROPOSAL – RFP # 31701-03057

PROPOSER: [PROPOSER LEGAL ENTITY NAME]

- 3.2.1.3. If the Proposer encloses the separate, sealed Qualifications Evidence and Cost Proposal components in a larger package for mailing or delivery, the Proposer must label the outermost package:

SEPARATELY SEALED QUALIFICATIONS EVIDENCE & COST PROPOSAL

RFP # 31701-03057

PROPOSER: [PROPOSER LEGAL ENTITY NAME]

- 3.2.1.4. The Proposer must submit a proposal, as required, to the following address:

Mitzi R. Hale
Department of Finance and Administration
Wm Snodgrass Tennessee Tower, 17th Floor
312 Rosa L. Parks Avenue
Nashville, TN 37243-1102
Telephone: 615-741-3735
Email: Mitzi.Hale@tn.gov

- 3.3. **Proposal Deadline.** A Proposer must ensure that the State receives a proposal no later than the Proposal Deadline time and date detailed in the RFP Section 2, Schedule of Events. The State will not accept late proposals, and a Proposer's failure to submit a proposal before the deadline will result in disqualification of the proposal.

3.4. **Proposer and Proposal Prohibitions:**

- A Proposer may NOT alter or revise proposal documents after the Proposal Deadline unless such is formally requested, in writing, by the State.
- A proposal must NOT include the Proposer's own contract terms and conditions.
- A proposal must NOT restrict the rights of the State or otherwise qualify either the offer to deliver services as required by this RFP or the Cost Proposal.
- A Cost Proposal must NOT result from any collusion between Proposers.

- A Proposer must NOT provide, for consideration in this RFP process or subsequent contract negotiations, incorrect information that the Proposer knew or should have known was materially incorrect.

4. **GENERAL INFORMATION & REQUIREMENTS**

4.1. **Conflict of Interest.** This RFP shall not result in a contract with:

- an individual who is, or within the past six months has been, an employee of the State of Tennessee or who is a volunteer member of a State board or commission that votes for, lets out, overlooks, or any manner superintends the services being procured in this RFP;
- a company, corporation, or any other contracting entity in which an ownership of two percent (2%) or more is held by an individual who is, or within the past six months has been, an employee of the State of Tennessee (this will not apply either to financial interests that have been placed into a "blind trust" arrangement pursuant to which the employee does not have knowledge of the retention or disposition of such interests or to the ownership of publicly traded stocks or bonds where such ownership constitutes less than 2% of the total outstanding amount of the stocks or bonds of the issuing entity);
- a company, corporation, or any other contracting entity which employs an individual who is, or within the past six months has been, an employee of the State of Tennessee in a position that would allow the direct or indirect use or disclosure of information, which was obtained through or in connection with his or her employment and not made available to the general public, for the purpose of furthering the private interest or personal profit of any person; or,
- any individual, company, or other entity involved in assisting the State in the development, formulation, or drafting of this RFP or its scope of services (such person or entity being deemed by the State as having information that would afford an unfair advantage over other Proposers).

For the purposes of applying the requirements of this subsection, the State will deem an individual to be an employee of the State of Tennessee until such time as all compensation for salary, termination pay, and annual leave has been paid, but the term "employee of the State of Tennessee" shall not include individuals performing volunteer services for the State of Tennessee.

4.2. **State Right of Rejection.** Subject to applicable laws and regulations, the State reserves the right to reject, at its sole discretion, any and all proposals.

The State may deem as non-responsive and reject any proposal that does not comply with all terms, conditions, and performance requirements of this RFP. Notwithstanding the foregoing, the State reserves the right to waive, at its sole discretion, a proposal's minor variances from full compliance with this RFP. If the State waives variances in a proposal, such waiver shall not modify the RFP requirements or excuse the Proposer from full compliance with such, and the State may hold any resulting Contractor to strict compliance with this RFP.

4.3. **State Right to Refuse Personnel.** The State reserves the right to refuse, at its sole discretion and notwithstanding any prior approval, any personnel of the prime contractor or a subcontractor providing service in the performance of a contract resulting from this RFP. The State will document in writing the reason(s) for any rejection of personnel.

4.4. **Disclosure of Proposal Contents**

4.4.1. Each proposal and all materials submitted to the State in response to this RFP become the property of the State of Tennessee. Selection or rejection of a proposal does not affect this right. By submitting a proposal, a Proposer acknowledges and accepts that the full proposal contents

and associated documents will become open to public inspection in accordance with the laws of the State of Tennessee.

- 4.4.2. The State will hold all proposal information in confidence during the evaluation process. Notwithstanding the foregoing, a list of actual Proposers submitting timely proposals may be available to the public, upon request, after the Proposal Deadline detailed in the RFP Section 2, Schedule of Events.
- 4.4.3. Proposals and associated materials will be open for review by the public in accordance with *Tennessee Code Annotated*, Section 10-7-504(a)(7), after the State completes proposal evaluations and issues an Evaluation Notice.

4.5. **Severability**

If any provision of this RFP is declared by a court to be illegal or in conflict with any law, said decision will not affect the validity of the remaining RFP terms and provisions, and the rights and obligations of the State and Proposers will be construed and enforced as if the RFP did not contain the particular provision held to be invalid.

5. **PROPOSAL EVALUATION & CONTRACT AWARD**

The RFP Coordinator will review each proposal for compliance with all general RFP requirements. Then, a Proposal Evaluation Team of at least three contracting agency employees will review the Qualifications Evidence and any supporting documentation for each compliant proposal. For a proposal in response to this RFP to be acceptable and eligible for contract award, all evaluators must determine that the Qualifications Evidence documents that the Proposer meets the mandatory qualifications and experience requirements and is otherwise, at least, minimally acceptable as a contractor for the subject services. The State will document, in writing, any determination (and the specific reasons therefore) that a Proposer's Qualification Evidence failed to adequately address and document compliance with mandatory requirements and acceptability for contract award.

After the evaluation of Qualifications Evidence is completed, the RFP Coordinator will review the Cost Proposal submitted by each Proposer deemed acceptable for contract award. The RFP Coordinator will assess whether each Cost Proposal complies with RFP requirements without qualification. The RFP Coordinator will document, in writing, any determination (and the specific reasons therefore) that a Cost Proposal is non-compliant with requirements such that the Proposer is non-responsive to the RFP.

The RFP Coordinator will identify the responsive, responsible Cost Proposal indicating the lowest cost to the state, and in the best interests of the state, said Proposer will be selected for contract award. In the event that two or more Proposers offer the same lowest cost, the RFP Coordinator will request a Best and Final Cost Proposal from the tied Proposers. Should a second tie result, the State will award the contract to one of the tied Proposers by chance.

PROPOSAL STATEMENT OF CERTIFICATIONS AND ASSURANCES

An individual legally empowered to contractually bind the Proposer must sign and complete the *Proposal Statement of Certifications and Assurances* below as required, and this signed statement must be included with the proposal as required by the RFP Attachment 6.2.

The Proposer does, hereby, expressly affirm, declare, confirm, certify, and assure ALL of the following:

1. The Proposer will comply with all of the provisions and requirements of the RFP.
2. The Proposer will provide, for the total contract period, all services defined in the Scope of Services specified by the *Pro Forma Contract* attached to the RFP.
3. The Proposer accepts and agrees, without qualification, to all terms and conditions set out by the *Pro Forma Contract* attached to the RFP.
4. The Proposer acknowledges and agrees that a contract resulting from the RFP shall incorporate, by reference, all proposal responses as a part of the contract.
5. The Proposer will comply, as applicable, with:
 - (a) the laws of the State of Tennessee;
 - (b) Title VI of the federal Civil Rights Act of 1964;
 - (c) Title IX of the federal Education Amendments Act of 1972;
 - (d) the Equal Employment Opportunity Act and the regulations issued there under by the federal government; and,
 - (e) the Americans with Disabilities Act of 1990 and the regulations issued there under by the federal government.
6. To the knowledge of the undersigned, the information detailed within the proposal submitted in response to the RFP is accurate.
7. The proposal submitted in response to the RFP was independently prepared, without collusion, under penalty of perjury.
8. No amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Proposer in connection with the RFP or any resulting contract.

By signature below, the signatory certifies legal authority to bind the proposing entity to the provisions of this RFP and any contract awarded pursuant to it. The State may, at its sole discretion and at any time, require evidence documenting the signatory's authority to legally bind the proposing entity.

PROPOSER SIGNATURE & DATE:

PRINTED NAME & TITLE:

PROPOSER LEGAL ENTITY NAME:

PROPOSER FEIN or SSN:

QUALIFICATIONS EVIDENCE GUIDE

The Proposer must address all items detailed below and provide, in sequence, the information and documentation as required (referenced with the associated item references). The Proposer must also detail the proposal page number for each item in the appropriate space below, and use this guide to cover the Qualifications Evidence section of the proposal (as its table of contents).

Prior to State evaluation of Qualifications Evidence, the RFP Coordinator will review each proposal for compliance with all RFP requirements, including but not limited to:

- The proposal must be delivered to the State no later than the Proposal Deadline.
- The Qualifications Evidence and the Cost Proposal must be packaged separately as required.
- The Qualifications Evidence must NOT contain cost or pricing information of any type.
- The proposal must NOT contain any qualification, limitation, or other restrictions.

The Proposal Evaluation Team will, then, review the Qualifications Evidence to determine if the mandatory requirement items are addressed as required and that it documents that the Proposer meets each mandatory qualification and experience requirement and is otherwise, at least, minimally acceptable as a contractor for the subject services.

PROPOSER LEGAL ENTITY NAME:		
Proposal Page # (Proposer completes)	Item Ref.	QUALIFICATIONS EVIDENCE
	6.2.1.	Detail the name, e-mail address, mailing address, telephone number, and facsimile number of the person the State should contact regarding the proposal.
	6.2.2.	Provide the RFP Attachment 6.1., <i>Proposal Statement of Certifications and Assurances</i> completed and signed by an individual empowered to bind the Proposer to the provisions of this RFP and any resulting contract. The document must be signed without exception or qualification.
	6.2.3.	Provide a statement, based upon reasonable inquiry, of whether the Proposer or any individual who shall perform work under the contract has a possible conflict of interest (e.g., employment by the State of Tennessee) and, if so, the nature of that conflict. <i>Any questions of conflict of interest shall be solely within the discretion of the State, and the State reserves the right to reject any proposal or cancel any award.</i>
	6.2.4.	Provide a statement of whether the Proposer or, to the Proposer's knowledge, any of the Proposer's employees, agents, independent contractors, or subcontractors, proposed to provide work on a contract pursuant to this RFP, have been convicted of, pled guilty to, or pled <i>nolo contendere</i> to any felony. If so, include an explanation providing relevant details. <i>Any issues relating to such a matter shall be solely within the discretion of the State, and the State reserves the right to reject any proposal or cancel any award.</i>
	6.2.5.	Provide a statement of whether there is any material, pending litigation against the Proposer that the Proposer should reasonably believe could adversely affect its ability to meet contract requirements pursuant to this RFP or is likely to have a material adverse effect on the Proposer's financial condition. If such exists, list each separately, explain the relevant details, and attach the opinion of counsel addressing whether and to what extent it would impair the Proposer's performance in a contract pursuant to this RFP. <i>Any issues relating to such a matter shall be solely within the discretion of the State, and the State reserves the right to reject any proposal or cancel any award.</i> <i>All persons, agencies, firms, or other entities that provide legal opinions regarding the Proposer must be properly licensed to render such opinions. The State may require the Proposer to submit proof of such licensure detailing the state of licensure and licensure number for each person or entity that</i>

PROPOSER LEGAL ENTITY NAME:		
Proposal Page # (Proposer completes)	Item Ref.	QUALIFICATIONS EVIDENCE
		<i>renders such opinions.</i>
	6.2.6.	Provide a statement confirming that the Proposer can provide all the telephone calling card services required in the Scope of Services.

COST PROPOSAL GUIDE

NOTICE: THE COST PROPOSAL MUST BE COMPLETED EXACTLY AS REQUIRED

COST PROPOSAL SCHEDULE— The Cost Proposal, detailed below, shall indicate the proposed price for all services, during the entire contract period, as set forth in the *Pro Forma Contract* attached to the RFP. The Cost Proposal shall remain valid for at least 120 days subsequent to the date of the Cost Proposal opening and thereafter in accordance with any contract resulting from this RFP. All monetary amounts shall be in U.S. currency and limited to two (2) places to the right of the decimal point.

The Evaluation Factor associated with each cost item is for evaluation purposes only. The evaluation factors do NOT and should NOT be construed as any type of volume guarantee or minimum purchase quantity. The evaluation factors shall NOT create rights, interests, or claims of entitlement in the Proposer.

<i>This Cost Proposal must be signed by an individual empowered to legally bind the proposing entity to the provisions of this RFP and any contract awarded pursuant to it. The State may, at its sole discretion and at any time, require evidence documenting the signatory's authority to contractually bind the proposing entity.</i>			
PROPOSER SIGNATURE & DATE:			
PRINTED NAME & TITLE:			
PROPOSER LEGAL ENTITY NAME:			
Cost Item Description	Proposed Cost ***These rates are applicable for the term of the Contract***	Evaluation Factor	Evaluation Cost (cost x factor)
Nationwide Telephone Calling Card Services – Cost per Minute See <i>pro forma</i> Contract Section A.8.a.	\$ _____ Per Minute	330,000	
International Telephone Calling Card Services – Maximum Cost per Minute See <i>pro forma</i> Contract Section A.8.a.	\$ _____ Per Minute	30,000	
Directory Assistance – Charge Per Call See <i>pro forma</i> Contract Section A.8.d.	\$ _____ Per Call	600	
EVALUATION COST AMOUNT (sum of evaluation costs above):			
<i>The state will use this sum to determine the Cost Proposal reflecting the lowest cost to the state. All calculations will use and result in numbers rounded to two (2) places to the right of the decimal point.</i>			

PRO FORMA CONTRACT

The *pro forma* contract detailed in following pages of this exhibit contains some “blanks” (signified by field descriptions in capital letters) that will be completed with appropriate information in the final contract resulting from the RFP.

**CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF GENERAL SERVICES
AND
CONTRACTOR NAME**

This Contract, by and between the State of Tennessee, Department of General Services, hereinafter referred to as the "State" and Contractor Legal Entity Name, hereinafter referred to as the "Contractor," is for the provision of telephone calling cards and services for State employees who travel or make State business calls, as further defined in the "SCOPE OF SERVICES."

The Contractor is a/an Individual, For-Profit Corporation, Non-Profit Corporation, Special Purpose Corporation Or Association, Partnership, Joint Venture, Or Limited Liability Company.
Contractor Federal Employer Identification, Social Security, or Edison Registration ID # Number
Contractor Place of Incorporation or Organization: Location

A. SCOPE OF SERVICES:

- A.1. The Contractor shall provide all service and deliverables as required, described, and detailed herein and shall meet all service and delivery timelines as specified by this Contract.
- A.2. The State provides and issues, for all State agencies, telephone calling cards to State employees who travel on State business and/or make State business calls.
- A.3. The Contractor will be required to supply and provide to the State, support for all telephone calling card services to include cards, telephone technical support, and other related products and/or services, as specifically outlined within this Contract.
- A.4. The Contractor must ensure all technical requirements of telephone calling cards are met, including call completion, traffic statistics compilation, and operation reports as requested by the State. These telephone calling cards must permit calls to originate on the public switched telephone network.
- A.5. Technical Requirements – The following are the minimum requirements for the listed telephone calling cards and service:
 - a. Card Design:
 - i. The Contractor will supply the State with custom telephone calling cards at no additional charge. The Contractor shall provide the new telephone calling card design and logo to the Department of Finance and Administration, Office for Information Resources (F&A OIR) for approval and each telephone calling card shall have the State of Tennessee logo imprinted on the face of the card.
 - ii. The telephone calling card must be imprinted with local and long distance dialing instructions.
 - iii. The telephone calling card must be imprinted with a unique ten (10) digit telephone calling card number. The telephone calling card number shall not be a valid telephone number.
 - b. Authorization Codes:
 - i. The authorization code shall consist of the ten (10) digit calling card number and a four (4) digit pin number for a total of fourteen (14) digits for each State telephone calling card that is issued. The Contractor must provide an electronic

file containing calling card numbers matched to pin numbers. The file must be provided in Microsoft Excel.

- ii. The State will also use the authorization code as a billing field.

A.6. Telephone Calling Card Assignment:

- a. At the beginning of the Contract, the Contractor must provide up to two thousand (2,000) telephone calling cards to the State, per the delivery schedule specified in Contract Section A.10.a. All telephone calling cards are to be shipped to F&A OIR for redistribution.
- b. The State maintains the right to request more telephone calling cards during the term of the Contract. The Contractor will provide telephone calling cards within a maximum of thirty (30) calendar days of receipt of Request for Service.
- c. The State will deactivate cards as required through the Contractor via verbal authorization followed by written confirmation.

A.7. Telephone Calling Card Features:

- a. Consecutive Calling - State telephone calling card users can place an unlimited number of sequential calls without reentering authorization codes by depressing a specified key on the touch pad at the conclusion of each call.
- b. Conference Calling - State telephone calling card users may connect up to three (3) total parties (if line has conference capabilities) without operator assistance to convene a conference call. Appropriate charges will be billed to the originating calling card.
- c. Mis-dial Corrections – The Contractor will establish, and submit for State approval, procedures for telephone calling card users to receive refunds on mis-dialed calls.
- d. Touch-Tone / Rotary Access - The telephone calling card can be used from any touch-tone or rotary telephone without incurring any additional charges.
- e. Operator Assistance - The Contractor will provide a calling card operator to assist users with call completion (including rotary dialed calls). Calling cards users encountering trouble should not be charged for operator assisted calls.
- f. Toll-Free Features – Access to the calling card service will be toll-free.

A.8. Contractor Service Features:

- a. The Contractor must provide telephone calling cards capable of both of the following two (2) different classes of service: Nationwide and International Calling, at the rates specified in Contract Section C.3.b. However, the telephone calling cards must be delivered for Nationwide only. The Contractor will add International only upon the State's request. The International add-on will be available within twenty-four (24) hours on the existing card.
- b. Personal Identification Numbers (PIN) - The Contractor shall provide a computer assigned random PIN for each telephone calling card. As a precaution against fraud in the event of a lost or stolen telephone calling card, the PIN shall not be printed on the telephone calling card. The telephone calling card number and the PIN shall be provided separately.

- c. Fraud Protections:
 - i. The Contractor shall provide capabilities for detecting and reporting suspected fraud and abuse in the use of telephone calling cards and for the identification and prosecution of perpetrators. Notification should be made to the State.
 - ii. After the State reports a lost or stolen telephone calling card, the Contractor shall assume all liability for fraudulent use of telephone calling cards by unauthorized users.
 - iii. Any new telephone callings cards issued must be authorized by the State Card Administrator(s) as identified by the State.
- d. The Contractor must provide Directory Assistance to locate telephone numbers for Nationwide Calling, at the rate specified in Contract Section C.3.b. Directory Assistance is not required for International Calling.

A.9. Support and Service Requirements:

- a. Isolating and Diagnosing Calling Card Malfunctions - The Contractor shall maintain a solution of monitoring and reporting to the State the progress of service requests for isolating and diagnosing telephone calling card malfunctions. This will include service completion, with defined procedures for escalating service, through management levels within the Contractor's organization.

A.10. Contract Transition and Implementation.

- a. If the current Contractor changes at the beginning of this Contract, the following shall apply:
 - i. The Contractor shall provide the new telephone calling card design and logo to F&A OIR for approval within one (1) month of Contract Start Date. See Contract Section A.5.a.
 - ii. The Contractor shall print and deliver the telephone calling cards to F&A OIR within four (4) weeks of the State's approval of the telephone calling card design and logo.
- b. If the Contractor is not awarded the next contract, the following shall apply:
 - i. The Contractor shall have a maximum transition period of sixty (60) calendar days, prior to the end of this Contract.
 - ii. The Contractor shall continue to provide telephone calling card services during the transition period in accordance with the pricing detailed in Contract Section C.3.b, until transition is completed.
 - iii. The Contractor shall work with the newly awarded contractor and the State, as required, to complete transition during the transition period, at no additional cost to the State.

A.11. Definitions:

- a. Time – all references made to time in this Contract refer to local time within the time zone of the State agency location (central standard time/daylight savings time or eastern standard time/daylight Savings time).

- b. Normal Business Hours (State of Tennessee) - Monday through Friday 8:00 a.m. through 4:30 p.m., except State Holidays.
- c. After Normal Business Hours (State of Tennessee) – Monday through Thursday 4:31 p.m. through 7:59 a.m., except State Holidays.
- d. Weekends (State of Tennessee) – 4:31 p.m. Friday through 7:59 a.m. Monday.
- e. State Holiday (State of Tennessee) – 8:00 a.m. through 7:59 a.m. the following day.
- f. Time of call – All references made to time of call in this solicitation refer to local time within the time zone of the calling number location.

B. CONTRACT PERIOD:

- B.1. This Contract shall be effective for the period beginning November 16, 2011, and ending on November 15, 2016. The Contractor hereby acknowledges and affirms that the State shall have no obligation for services rendered by the Contractor which were not performed within this specified contract period.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed Written Dollar Amount (\$Number). The payment rates in section C.3 shall constitute the entire compensation due the Contractor for all service and Contractor obligations hereunder regardless of the difficulty, materials or equipment required. The payment rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the payment rates detailed in section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

- C.2. Compensation Firm. The payment rates and the maximum liability of the State under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless amended.
- C.3. Payment Methodology. The Contractor shall be compensated based on the payment rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in section C.1.
 - a. The Contractor's compensation shall be contingent upon the satisfactory completion of units, milestones, or increments of service defined in section A.
 - b. The Contractor shall be compensated for said units, milestones, or increments of service based upon the following payment rates:

Service Description	Amount (per compensable increment)
Nationwide Telephone Calling Card Services – Cost per Minute	\$ _____ Per Minute
International Telephone Calling Card Services – Maximum Cost per Minute	\$ _____ Per Minute
Directory Assistance – Charge Per Call	\$ _____ Per Call

- c. The rates in Contract Section C.3.b above are applicable for the term of the Contract.
 - d. The State will only pay the Contractor for requested telephone calling cards and services in accordance with Contract Section C.3.b above. Federal Communication Commission (FCC) regulatory service fees (Universal Service Fees) will not be reimbursed separately and should be included in the Contractor's costs.
 - e. Any shipping and handling costs associated with this Contract will not be reimbursed separately and are to be included in the costs as listed in Contract Section C.3.b above.
 - f. The State maintains the right to adjust the quantity of calling cards during the term of the contract without adjusting the per minute service pricing parameters.
 - g. International calling capability shall be provided by the Contractor and shall be billed as a fixed per minute flat rate to cover the cost of calls to or from all Contractor international roaming partners. International calls will be billed to the State based on the rate charged by the international calling origination or destination point. The cost per minute charged to the State shall not exceed the Maximum Cost per Minute in Contract Section C.3.b above.
- C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.
- C.5. Invoice Requirements. The Contractor shall invoice the State only for completed increments of service and for the amount stipulated in Section C.3, above, and as required below prior to any payment.
- C.5.a. Electronic Billing Requirements:.
- i. The State requires three (3) CD's (1 original and 2 duplicates) (or other type of Electronic billing approved by Billing Services) to be provided as invoicing to the Department of Finance and Administration, Billing Services by the 10th of the month at no additional charge to the State. The method of billing provided must be compatible for use with computer equipment (hardware and software) used by the State and must be operational.
 - ii. Billing Services will assist in the formatting of such Electronic invoicing to insure the proper information is in place. The Electronic invoicing shall be delivered each month in lieu of paper invoicing covering the service on the contract.
 - iii. The Electronic invoicing must provide all billing information of all usage associated with each request for service. The billing information on the Electronic invoice shall be matched with the contract line commodity codes or NIGP codes used by the State.

- iv. All charges based on the appropriate line commodity code or NIGP codes shall be presented on the Electronic invoicing and billed to the appropriate Request for Service (RFS) number and/or telephone number that incurred said charges.
- v. The format of the Electronic billing must be provided to Billing Services, in writing, within thirty (30) days of award of contract. Format of the Electronic invoicing is required to be in the following billing records format for call charges. The format is not inclusive and additional fields or records may be required as determined by the State.

Format of call records must include:

 - 1) Account Number
 - 2) Billing Number
 - 3) Call Date
 - 4) Time of Call
 - 5) Duration of Call
 - 6) Call to City
 - 7) Call to State
 - 8) Call to Number
 - 9) Call Charges
 - 10) Commodity Code
- vi. At the bottom of the billing records, a summary record must be provided that summarizes the billing by commodity code/NIGP code and the amount billed to each commodity code/NIGP code.
- vii. Records that do not conform to the above criteria shall be rejected from the Electronic Billing received and must be credited to the State's account no later than the second consecutive month after the date of rejection.
- viii. Rejected records can be resubmitted after correction no later than sixty (60) calendar days from the date of rejection by adding to the current month's Electronic invoice. The State will not accept corrections after June 30 (the State's fiscal year end) of any year. The corrected rejected charges must be identified as being previously rejected on a prior month.
- ix. An operational sample of the Electronic Billing must be provided and approved by Billing Services as functional within ninety (90) calendar days of contract award.

C.5.b. Billing/Invoices.

- i. Invoices are to be sent to:

State of Tennessee
Department of Finance and Administration
Billing Services
20th floor, WRS Tennessee Tower
312 Rosa L. Parks Avenue
Nashville, TN 37243-1102
- ii. If at anytime the Contractor is unable to submit accurate invoice information in the required format, Billing Services may, at its sole option, refuse payment of the Vendor's invoice, or may delay payments without penalty.
- iii. All requests for credits made ten (10) calendar days or more before the close of a billing cycle must be reflected on the next invoice. If the Contractor does not include the credits requested and due on the invoice, the State will deduct a like amount from future bills.

C.5.c. Contractor Invoicing Contact.

Contractor Contact Name & Title
Contractor Name
Address
Email Address
Telephone # Number
FAX # Number

This information shall be updated with Billing Services, when changes in personnel occur during the contract term.

C.5.d. Billing Acceptance.

- i. Upon satisfactory completion of a ninety (90) calendar day billing acceptance period, the State shall issue written notification of billing acceptance. If the Contractor fails to gain Billing Service's acceptance within ninety (90) calendar days from contract award effective date, the State may terminate the contract.

C.5.e. Remedies.

- i. The Contractor will be imposed a penalty of One Thousand Dollars (\$1,000.00) if a readable Electronic Invoice for billing purposes is not delivered, after the initial ninety (90) day award period, by the 10th day of the following month. An additional charge of One Hundred Dollars (\$100.00) a day will be imposed on the Contractor for each additional day of the contract that the Contractor does not have a readable Electronic billing.

C.5.f. The Contractor understands and agrees that an invoice to the State under this Contract shall:

- (1) include only charges for service described in Contract Section A and in accordance with payment terms and conditions set forth in Contract Section C;
 - (2) not include any future work but will only be submitted for completed service; and
 - (3) not include sales tax or shipping charges.
- i. The Contractor agrees that timeframe for payment (and any discounts) begins when the State is in receipt of each invoice meeting the minimum requirements above.
 - ii. The Contractor shall complete and sign a "Substitute W-9 Form" provided to the Contractor by the State. The taxpayer identification number contained in the Substitute W-9 submitted to the State shall agree to the Federal Employer Identification Number or Social Security Number referenced in this Contract for the Contractor. The Contractor shall not invoice the State for services until the State has received this completed form.

C.5.g. The Contractor shall provide compiled traffic statistics and operational reports (usage detail reports) as required by Billing Services. The information shall be provided monthly by Electronic means approved by Billing Services at no cost to the State. The Contractor shall provide eight (8) hours of training to designated State personnel on the use of the software used to establish the Electronic information. The Contractor is required to provide support pertaining to this software via telephone during the State's normal business hours throughout the term of the contract.

C.6. Payment of Invoice. A payment by the State shall not prejudice the State's right to object to or question any payment, invoice, or matter in relation thereto. A payment by the State shall not be construed as acceptance of any part of the work or service provided or as approval of any amount invoiced.

- C.7. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the State, on the basis of audits conducted in accordance with the terms of this Contract, not to constitute proper remuneration for compensable services.
- C.8. Deductions. The State reserves the right to deduct from amounts, which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of Tennessee any amounts, which are or shall become due and payable to the State of Tennessee by the Contractor.
- C.9. Prerequisite Documentation. The Contractor shall not invoice the State under this Contract until the State has received the following documentation properly completed.
- a. The Contractor shall complete, sign, and present to the State an "Authorization Agreement for Automatic Deposit (ACH Credits) Form" provided by the State. By doing so, the Contractor acknowledges and agrees that, once said form is received by the State, all payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee shall be made by Automated Clearing House (ACH).
 - b. The Contractor shall complete, sign, and present to the State a "Substitute W-9 Form" provided by the State. The taxpayer identification number detailed by said form must agree with the Contractor's Federal Employer Identification Number or Tennessee Edison Registration ID referenced in this Contract.

D. STANDARD TERMS AND CONDITIONS:

- D.1. Required Approvals. The State is not bound by this Contract until it is signed by the contract parties and approved by appropriate officials in accordance with applicable Tennessee laws and regulations (depending upon the specifics of this contract, said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Personnel, and the Comptroller of the Treasury).
- D.2. Modification and Amendment. This Contract may be modified only by a written amendment signed by all parties hereto and approved by both the officials who approved the base contract and, depending upon the specifics of the contract as amended, any additional officials required by Tennessee laws and regulations (said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Personnel, and the Comptroller of the Treasury).
- D.3. Termination for Convenience. The State may terminate this Contract without cause for any reason. Said termination shall not be deemed a breach of contract by the State. The State shall give the Contractor at least thirty (30) days written notice before the effective termination date. The Contractor shall be entitled to compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the State be liable to the Contractor for compensation for any service which has not been rendered. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D.4. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the State shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor.

D.5. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, each shall contain, at a minimum, sections of this Contract below pertaining to "Conflicts of Interest," "Nondiscrimination," and "Records" (as identified by the section headings). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.

D.6. Conflicts of Interest. The Contractor warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract.

The Contractor acknowledges, understands, and agrees that this Contract shall be null and void if the Contractor is, or within the past six months has been, an employee of the State of Tennessee or if the Contractor is an entity in which a controlling interest is held by an individual who is, or within the past six months has been, an employee of the State of Tennessee.

D.7. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

D.8. Prohibition of Illegal Immigrants. The requirements of Public Acts of 2006, Chapter Number 878, of the state of Tennessee, addressing the use of illegal immigrants in the performance of any Contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.

a. The Contractor hereby attests, certifies, warrants, and assures that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment Reference A, hereto, semi-annually during the period of this Contract. Such attestations shall be maintained by the Contractor and made available to state officials upon request.

b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the period of this Contract, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work relative to this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work relative to this Contract. Attestations obtained from such subcontractors shall be maintained by the Contractor and made available to state officials upon request.

c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Said records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.

d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Public Chapter 878 of 2006 for acts or omissions occurring

after its effective date. This law requires the Commissioner of Finance and Administration to prohibit a contractor from contracting with, or submitting an offer, proposal, or bid to contract with the State of Tennessee to supply goods or services for a period of one year after a contractor is discovered to have knowingly used the services of illegal immigrants during the performance of this Contract.

- e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not either a United States citizen, a Lawful Permanent Resident, or a person whose physical presence in the United States is authorized or allowed by the federal Department of Homeland Security and who, under federal immigration laws and/or regulations, is authorized to be employed in the U.S. or is otherwise authorized to provide services under the Contract.
- D.9. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.10. Prevailing Wage Rates. All contracts for construction, erection, or demolition or to install goods or materials that involve the expenditure of any funds derived from the State require compliance with the prevailing wage laws as provided in *Tennessee Code Annotated*, Section 12-4-401 *et seq.*
- D.11. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.12. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.13. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.14. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.
- The Contractor, being an independent contractor and not an employee of the State, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Contractor's employees, and to pay all applicable taxes incident to this Contract.
- D.15. State Liability. The State shall have no liability except as specifically provided in this Contract.
- D.16. Force Majeure. The obligations of the parties to this Contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, natural disasters, riots, wars, epidemics, or any other similar cause.

- D.17. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.18. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under *Tennessee Code Annotated*, Sections 9-8-101 through 9-8-407.
- D.19. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.
- D.20. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.
- D.21. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

E. SPECIAL TERMS AND CONDITIONS:

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.
- E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by EMAIL or facsimile transmission with recipient confirmation. Any such communications, regardless of method of transmission, shall be addressed to the respective party at the appropriate mailing address, facsimile number, or EMAIL address as set forth below or to that of such other party or address, as may be hereafter specified by written notice.

The State:

Mr. Bob Watson
Communications System Analyst
Department of Finance and Administration
312 Rosa L. Parks Avenue
Suite # 1500 William Snodgrass Tennessee Tower
Nashville, TN 37243-1102
Robert.I.watson@tn.gov
Telephone # 615 741-5180
FAX # 615 741-6414

The Contractor:

Contractor Contact Name & Title
Contractor Name
Address

Email Address
Telephone # Number
FAX # Number

All instructions, notices, consents, demands, or other communications shall be considered effectively given upon receipt or recipient confirmation as may be required.

- E.3. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate the Contract upon written notice to the Contractor. Said termination shall not be deemed a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- E.4. Tennessee Consolidated Retirement System. The Contractor acknowledges and understands that, subject to statutory exceptions contained in *Tennessee Code Annotated*, Section 8-36-801, *et. seq.*, the law governing the Tennessee Consolidated Retirement System (TCRS), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established pursuant to *Tennessee Code Annotated*, Title 8, Chapter 35, Part 3 accepts state employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor, if a retired member of TCRS, may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the period of this Contract.
- E.5. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State shall be regarded as confidential information in accordance with the provisions of applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards. Such confidential information shall not be disclosed, and all necessary steps shall be taken by the Contractor to safeguard the confidentiality of such material or information in conformance with applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards.

The Contractor's obligations under this section do not apply to information in the public domain; entering the public domain but not from a breach by the Contractor of this Contract; previously possessed by the Contractor without written obligations to the State to protect it; acquired by the Contractor without written restrictions against disclosure from a third party which, to the Contractor's knowledge, is free to disclose the information; independently developed by the Contractor without the use of the State's information; or, disclosed by the State to others without restrictions against disclosure. Nothing in this paragraph shall permit Contractor to disclose any information that is confidential under federal or state law or regulations, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties.

It is expressly understood and agreed the obligations set forth in this section shall survive the termination of this Contract.

- E.6. Prohibited Advertising. The Contractor shall not refer to this Contract or the Contractor's relationship with the State hereunder in commercial advertising in such a manner as to state or

imply that the Contractor or the Contractor's services are endorsed. It is expressly understood and agreed that the obligations set forth in this section shall survive the termination of this Contract in perpetuity.

- E.7. Limitation of Liability. The parties agree that the Contractor's liability under this Contract shall be limited to an amount equal to two (2) times the Maximum Liability amount detailed in section C.1. and as may be amended, PROVIDED THAT in no event shall this section limit the liability of the Contractor for intentional torts, criminal acts, or fraudulent conduct.
- E.8. Disclosure of Personal Identity Information. The Contractor shall report to the State any instances of unauthorized disclosure of confidential information that come to the attention of the Contractor. Any such report shall be made by the Contractor within twenty-four (24) hours after the instance has come to the attention of the Contractor. The Contractor, at the sole discretion of the State, shall provide no cost credit monitoring services for individuals that are deemed to be part of a potential disclosure. The Contractor shall bear the cost of notification to individuals having personal identity information involved in a potential disclosure event, including individual letters and/or public notice.
- E.9. Incorporation of Additional Documents. Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these items shall govern in order of precedence below.
- a. this Contract document with any attachments or exhibits (excluding the items listed at subsections b. through e., below);
 - b. any clarifications of or addenda to the Contractor's proposal seeking this Contract;
 - c. the State solicitation, as may be amended, requesting proposals in competition for this Contract;
 - d. any technical specifications provided to proposers during the procurement process to award this Contract;
 - e. the Contractor's proposal seeking this Contract.

IN WITNESS WHEREOF,

CONTRACTOR LEGAL ENTITY NAME:

CONTRACTOR SIGNATURE

DATE

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

DEPARTMENT OF GENERAL SERVICES:

STEVEN G. CATES, COMMISSIONER

DATE

ATTACHMENT REFERENCE A

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

SUBJECT CONTRACT NUMBER:	
CONTRACTOR LEGAL ENTITY NAME:	
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)	

The Contractor, identified above, does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.

CONTRACTOR SIGNATURE

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. If said individual is not the chief executive or president, this document shall attach evidence showing the individual's authority to contractually bind the Contractor.

PRINTED NAME AND TITLE OF SIGNATORY

DATE OF ATTESTATION